



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Town of Milford

Petitioner

and

AFSCME Local 3657, Milford Police Employees

Respondent

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Case No. A-0480-21

Decision No. 2005-043

PRE-HEARING MEMORANDUM AND ORDER

BACKGROUND

The Town of Milford (hereinafter "the Town") filed a Petition for Declaratory Ruling with the Public Employee Labor Relations Board ("PELRB" or "Board") on December 30, 2004. The Town's petition seeks a declaratory ruling from the Board regarding the rights of the parties as to the composition of the bargaining unit currently represented by AFSCME Council 93 ("Union"). By way of background, it states that the current collective bargaining agreement (CBA) between the Town and the Union will expire on March 31, 2005 and that the recognition clause contained therein differs materially in several respects from the certification issued by the Board. More specifically, the Town indicates that the Board certification expressly excludes sergeants from the bargaining unit, while the recognition clause in the current CBA expressly includes them. Additionally, the Town asserts that the duties and responsibilities of the sergeants demonstrate that they are supervisors within the meaning of RSA 273-A:8, II and therefore may not belong in the same bargaining unit as the patrol officers they supervise.

The Town is therefore seeking a declaratory ruling to establish the rights of the parties upon the expiration of the current CBA in the event that the matter of the placement of the sergeants has not been resolved during the course of bargaining. The Town points out that the procedures for seeking modification of the bargaining unit are not available to the Town precisely because the Board's certification already reflects the sergeants' exclusion from the unit. As remedies, the Town requests that the Board issue a declaratory ruling deciding, as a matter of fact and law that (1) sergeants are excluded from the existing bargaining unit because the Board's certification prevails over a conflicting recognition clause, and (2) RSA 273-A:8, II

applies to exclude sergeants from the bargaining unit based on the supervisory nature of their duties and responsibilities.

The Union filed exceptions to the District's petition on January 12, 2005 but did not respond to the factual allegations set forth therein. The Union raises two grounds upon which it argues that the Town's petition should be dismissed. First of all, the Union asserts that the action is not ripe for review. It states that the parties are currently engaged in collective bargaining for a successor contract and one of the issues on the table concerns the exclusion of sergeants from the contract's recognition clause. The Union claims that it is entirely possible that this matter may be resolved by the parties at the bargaining table and that the Town is requesting intervention in a dispute that may never materialize. In this regard, the Union contends that the Town is requesting a ruling on a future, hypothetical set of circumstances. Secondly, the Union submits that the Board does not have the authority to become involved in the parties' collective bargaining. According to the Union, the Town's petition seeks to have the Board intervene in the on-going negotiations between the parties and thereby alter the relationship between the parties' at the table. Based upon the foregoing, the Union states that the Town's petition must be dismissed.

A pre-hearing conference was conducted at PELRB offices on March 16, 2005 before the undersigned hearing officer.

PARTICIPATING REPRESENTATIVES

For the Petitioner: Warren D. Atlas, Esquire

For the Respondent: Katherine McClure, Esquire

ISSUES FOR DETERMINATION BY THE BOARD

- (1) Is the instant Petition for Declaratory Ruling ripe for Board review?
- (2) Would the Board's ruling upon the Town's Petition for Declaratory Ruling be beyond its authority or otherwise constitute an improper involvement in the parties' collective bargaining?
- (3) If not, may the Town refuse to recognize the Sergeants as part of the bargaining unit upon the expiration of the collective bargaining agreement based on the Board's certification that expressly excludes the position of Sergeant from inclusion within the bargaining unit? (and/or)
- (4) Is the Town permitted to exclude the Sergeant's from the bargaining unit based upon their supervisory status as of the expiration of the collective bargaining agreement?

WITNESSES

For the Petitioner:

1. Fred Douglas, Chief of Police
2. Captain Richard Fortin
3. Captain John Winterburn

For the Respondent:

1. Steve Lyons, AFSCME
2. Tim Beers
3. Scott Schovanec

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. Current bargaining unit certification, PELRB Case No. A-0480 (A)
2. Current collective bargaining agreement

For the Petitioner:

1. Past contract recognition clauses (1983-1985; 1985-1986; 1988-1990)
2. Position Description, Squad Sergeant
3. Position Description, Support Division Sergeant

For the Respondent:

None other than those marked as "Joint," above.

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing, later with reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is understood that each party may rely on the representations of the other party that the exhibits listed above will be available at the hearing.

LENGTH OF HEARING

The time being set aside for this hearing is a maximum of three (3) hours. If either party believes that additional time is required, written notice of the need for additional time shall be filed with the PELRB at least twenty (20) days prior to the date of the evidentiary hearing.

DECISION

1. Within seven (7) days of the date of this order, if it has not already done so, the Town shall furnish the Union with copies the prior CBA's that are referenced within its Petition for Declaratory Ruling.
2. The Union shall file its Answer to the factual allegations set forth in the Town's Petition for Declaratory Ruling on or before **March 30, 2005**. The Union shall formally indicate therein, in accordance with Pub 206.01 (d), whether or not it requests a hearing in this matter.
3. The parties' representatives shall use best efforts to confer as soon as possible in order to compose a mutual statement of agreed facts and exhibits, and to further explore ~~whether they are be able to stipulate to sufficient facts in order to submit the case for the~~ Board's consideration solely by legal briefs. In any event, they shall meet, or otherwise confer for this purpose, no later than **April 15, 2005**.
4. In the event the parties agree to all relevant facts and so stipulate, then the parties shall both execute the "Stipulation of Facts" and file said document with the PELRB within five (5) days of such execution. Thereafter, the parties shall file their respective supporting Memorandum of Law with the PELRB within fourteen (14) days. Upon receipt of these documents, the record shall be deemed closed and a decision shall issue based solely upon the file documents, stipulated facts and the parties' memoranda, unless it is determined by the PELRB that a hearing is necessary prior to a final determination on the District's petition.
5. In the event that the parties cannot agree to all relevant facts, then they shall memorialize those facts upon which they can so stipulate and file said document, signed by both representatives, with the PELRB within five (5) days.
6. In the event the instant matter proceeds to hearing, the party representatives shall forward any amendments to, or deletions from, their Witness and Exhibit lists, as detailed above, to the opposing representative or counsel, and to the PELRB; at least five (5) days prior to the scheduled hearing date. The party representatives shall meet, or otherwise arrange, to pre-mark any exhibits, for identification, prior to the time of hearing and have sufficient copies available for distribution at the hearing as required by Pub 203.02.
7. The parties shall file any additional preliminary, procedural or dispositive motions no later than twenty (20) calendar days prior to the scheduled hearing date.

8. Subject to the directives referenced above and unless otherwise ordered as a result of the filing of any subsequent motion or for other good cause shown, an evidentiary hearing is scheduled to be held on

Tuesday, May 10, 2005 at 9:30 AM

at the offices of the Public Employee Labor Relations Board, Concord, New Hampshire.

So ordered.

Signed this 22nd day of March, 2005.



Peter C. Phillips, Esq.
Hearing Officer

Distribution:

Warren D. Atlas, Esquire
Katherine McClure, Esquire